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Trustee for the consolidated SIPA Liquidation of
Bernard L. Madoff Investment Securities LLC
and Bernard L. Madoff*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

In re:

BERNARD L. MADOFF,

Debtor.

Adv. Pro. No. 08-1789 (BRL)

SIPA Liquidation

(Substantively Consolidated)

**TRUSTEE'S COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL AND COUNTER-STATEMENT OF THE ISSUES TO
BE PRESENTED ON APPEAL**

Pursuant to Rule 8006 of the Federal Rules of Bankruptcy Procedure, Appellee Irving H. Picard (“Trustee”), trustee for the substantively consolidated liquidation of Bernard L. Madoff Investment Securities LLC (“BLMIS”) under the Securities Investor Protection Act, 15 U.S.C. § 78aaa *et seq.* (“SIPA”), and the estate of Bernard Madoff individually, hereby submits the following counter-designation of additional items to be included in the record on appeal (the “Counter-Designation”) and counter-statement of the issues to be presented on appeal (the “Counter-Statement”) in connection with the appeals filed on September 24, 27 and 28, 2013 (ECF Nos. 5516, 5517, 5522, and 5523) on behalf of certain customers (the “Appellants”) from the Memorandum Decision and Order Granting, to the Extent Set Forth Herein, the Trustee’s Motion for an Order Affirming the Trustee’s Calculation of New Equity and Denying Time-Based Damages (the “Order”), entered by the United States Bankruptcy Court for the Southern District of New York (Lifland, J.) on September 10, 2013 (ECF No. 5463), and respectfully submits as follows:

**COUNTER-DESIGNATION OF ADDITIONAL ITEMS TO BE INCLUDED
IN THE RECORD ON APPEAL**

The Trustee hereby counter-designates the following items to be included in the record on appeal:

SIPC v. BLMIS, 08-1789-BRL (Bankr. S.D.N.Y.) (Time-Based Damages Filings)

Filed On:	Docket No.	Docket Text
12/23/2008	12	Order signed on 12/23/2008 on Application for an Entry of an Order Approving Form and Manner of Publication and Mailing of Notices, Specifying Procedures For Filing, Determination, and Adjudication of Claims; and Providing Other Relief (Related Doc # 8). (Saenz De Viteri, Monica) (Entered: 12/23/2008)

Filed On:	Docket No.	Docket Text
02/10/2009	80	Motion for an Order Modifying the December 23, 2008 Order Establishing Deadlines for the Filing of Customer Claims (related document(s)79) filed by Philip Bentley on behalf of Lucerne Foundation, Collingwood Enterprises and Douglas Rinsky with hearing to be held on 2/24/2009 at 10:00 AM at Courtroom 623 (BRL) Responses due by 2/20/2009, (Attachments: 1 Exhibit Exhibits A-I2 Proposed Order) (Bentley, Philip) (Entered: 02/10/2009)
02/20/2009	113	Response of the Unofficial Claims Committee in Opposition to Motion for an Order Modifying the Dec. 23, 2008 Order Establishing Claims Deadlines (related document(s) 80) filed by Jonathan M. Landers on behalf of Ruth E. Goldstein, June Pollack. (Landers, Jonathan) (Entered: 02/20/2009)
02/20/2009	114	Response of the Securities Investor Protection Corporation in Opposition to Motion of Lucerne Foundation, et al., for Order Creating Exception to Customer Claims Filing Deadline (related document(s) 80) filed by Josephine Wang on behalf of Securities Investor Protection Corporation. (Attachments: 1 Certificate of Service) (Wang, Josephine) (Entered: 02/20/2009)
02/20/2009	115	Trustee's Objection to Motion for an Order Modifying the December 23, 2008 Order Establishing Deadlines For the Filing of Customer Claims (related document(s) 80) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 02/20/2009)
02/23/2009	117	Reply in Further Support of Motion for an Order Modifying the December 23, 2008 Order Establishing Deadlines for the Filing of Customer Claims (related document(s) 80) filed by Philip Bentley on behalf of Lucerne Foundation, Collingwood Enterprises and Douglas Rinsky. (Bentley, Philip) (Entered: 02/23/2009)
2/24/2009	124	Memorandum Decision And Order Denying Motion To Modify Order Establishing Deadlines For The Filing Of Customer Claims (related document(s)80). (Saenz De Viteri, Monica) (Entered: 02/24/2009)

Filed On:	Docket No.	Docket Text
2/25/2009	171	Transcript regarding Hearing Held on 2/24/09 RE: Motion for Order Pursuant to Section 78eee(b)(5) os[sic] SIPA, Sections 105, 330 and 331 of the Bankruptcy Code, Bankruptcy Rule 2016 (a) and Local Bankruptcy Rule 2016-1 Establishing Procedures Governing Interim Monthly Compensation of Trustee and BAnker[sic] & Hostetler, LLP, et al. Remote electronic access to the transcript is restricted until 5/26/2009. The transcript may be viewed at the Bankruptcy Court Clerk's Office. [Transcription Service Agency: Veritext, LLC.]. (See the Courts Website for contact information for the Transcription Service Agency.). Notice of Intent to Request Redaction Deadline Due By 3/4/2009. Statement of Redaction Request Due By 3/18/2009. Redacted Transcript Submission Due By 3/30/2009. Transcript access will be restricted through 5/26/2009. (Richards, Beverly) (Entered: 04/21/2009)
7/17/2012	4920	Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims filed by David J. Sheehan on behalf of Irving H. Picard with hearing to be held on 8/9/2012 at 10:00 AM at Courtroom 623 (BRL) Objections due by 8/2/2012, (Attachments: # 1 Proposed Order)(Sheehan, David) (Entered: 07/17/2012)
7/17/2012	4921	Affidavit of Service of Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document(s) 4920) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 07/17/2012)
7/18/2012	4925	Affidavit of Service Affidavit of Mailing of Notice for July 17, 2012 of Motion for Order and Motion for Order Scheduling Hearing on Trustees Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims, and [Proposed] Scheduling Order (related document(s) 4920) filed by John J Collins Jr. on behalf of AlixPartners LLP. (Collins, John) (Entered: 07/18/2012)
8/2/2012	4957	Response To Trustee's Motion For Order Setting Common Briefing Schedule To Address Time-Based Adjustment Issues (related document(s) 4920) filed by Marcy R. Harris on behalf of HHI Investment Trust #2; King Harris, in his fiduciary capacity; Katherine P. Harris, in her fiduciary capacity; Toni H. Paul, in her fiduciary capacity; Denise Saul, in her fiduciary capacity; S. (Harris, Marcy) (Entered: 08/02/2012)
8/6/2012	4963	Notice of Adjournment of Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document(s) 4920) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/06/2012)

Filed On:	Docket No.	Docket Text
8/22/2012	4996	Affidavit of Service of Notice of Adjournment of Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document(s) 4963) filed by Marc E. Hirschfield on behalf of Irving H. Picard. (Hirschfield, Marc) (Entered: 08/22/2012)
8/24/2012	5001	Trustee's Reply to Objections to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s) 4920, 4952, 4957) filed by Jorian L. Rose on behalf of Irving H. Picard. with hearing to be held on 8/29/2012 at 10:00 AM at Courtroom 623 (BRL) (Attachments: # 1 Exhibit A# 2 Exhibit B) (Rose, Jorian) (Entered: 08/24/2012)
8/24/2012	5002	Affidavit of Service of Trustee's Reply to Objections to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s) 5001) filed by Marc E. Hirschfield on behalf of Irving H. Picard. (Hirschfield, Marc) (Entered: 08/24/2012)
8/27/2012	5004	Response to Trustee's Reply to Objections to Trustee's Motion for an Order to Schedule Hearing on Time-Based Adjustment Issues (related document(s) 5001, 4290, 4957) filed by Marcy R. Harris on behalf of HHI Investment Trust #2 and Defendants Listed on Exhibit A. (Attachments: # 1 Exhibit A# 2 Exhibit B) (Harris, Marcy) (Entered: 08/27/2012)
8/28/2012	5005	Notice of Adjournment of Hearing on Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims (related document 4920) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/28/2012)
8/28/2012	5007	Affidavit of Service of Notice of Adjournment of Hearing on Motion for Order Scheduling Hearing on Trustee's Motion Affirming Denial of Time-Based Damages Adjustment to Customer Claims and Notice of Agenda for Matters Scheduled for Hearing on August 29, 2012 at 10:00 A.M. (related document(s) 5006, 5005) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/28/2012)
8/30/2012	5009	Trustee's Reply to Second HHI Objection to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s) 4920, 5004, 4957) filed by David J. Sheehan on behalf of Irving H. Picard. with hearing to be held on 9/5/2012 at 10:00 AM at Courtroom 623 (BRL) (Attachments: # 1 Exhibit A) (Sheehan, David) (Entered: 08/30/2012)
8/30/2012	5011	Affidavit of Service of Trustee's Reply to Second HHI Objection to Trustee's Motion for an Order to Schedule Hearing on Time-Based Damages Issue (related document(s) 5009) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 08/30/2012)
09/05/2012	5022	Scheduling Order signed on 9/5/2012. (Entered: 09/05/2012)

Filed On:	Docket No.	Docket Text
11/7/2012	5069	Notice of Adjournment for Time-Based Damages Issue (related document(s) 5038) filed by Jorian L. Rose on behalf of Irving H. Picard. with hearing to be held on 2/13/2013 (check with court for location) Objections due by 12/3/2012, (Rose, Jorian) (Entered: 11/07/2012)
12/3/2012	5118	Objection to Motion /Trustee's Motion for an Order Affirming Trustee's Calculations of Net Equity and Denying Time-Based Damages (related document(s) 5038) filed by Bruce Buechler on behalf of Irrevocable Charitable Remainder Trust of Yale Fishman and the Glenn Akiva Fishman Charitable Remainder Trust. (Attachments: # 1 Exhibit A and Exhibit B) (Buechler, Bruce) (Entered: 12/03/2012)
12/3/2012	5120	Memorandum of Law In Opposition (related document(s) 5038) filed by Paula J. Warmuth on behalf of Michael Most. (Attachments: # 1 Exhibit A - Part One# 2 Exhibit A - Part Two# 3 Exhibit A - Part Three) (Warmuth, Paula) (Entered: 12/03/2012)
12/3/2012	5122	Response to Motion -- Memorandum for MUUS Independence Fund LP and Michael W. Sonnenfeldt in Response to the Trustees Time-Based Damages Motion (related document(s) 5038) filed by Robert J. Kaplan on behalf of Muus Independence Fund LP, Michael W. Sonnenfeldt. (Kaplan, Robert) (Entered: 12/03/2012)
12/3/2012	5125	Opposition by Samdia Family LP to Trustee's Time Based Damages Motion (related document(s) 5038) filed by Joel L. Herz on behalf of Samdia Family, LP. (Herz, Joel) (Entered: 12/03/2012)

Filed On:	Docket No.	Docket Text
12/3/2012	5126	Objection to Motion (related document(s) 5038) filed by Andrew Howard Sherman on behalf of 1994 Trust for the Children of Stanley and Pamela Chais, 1996 Trust for the Children of Stanley and Pamela Chais, 1999 Trust for the Grandchildren of Stanley and Pamela Chais, Ari Chais 1999 Trust, Ari Chais Transferee Trust No. 1, Benjamin Paul Chasalow 1999 Trust, Benjamin Paul Chasalow Transferee Trust No. 1, Emily Chais, Mark Chais, William Chais, Wrenn Chais, Chais Investments, Ltd., Chais Management, Inc., Chais Management, Ltd., Chais Venture Holdings, Chloe Frances Chais 1994 Trust, Chloe Frances Chais Transferee Trust No. 1, Emily Chais 1983 Trust, Emily Chais Issue Trust No. 1, Emily Chais Issue Trust No. II, Emily Chais Trust No. 2, Emily Chais Trust No. 3, Jonathan Wolf Chais 1996 Trust, Jonathon Wolf Chais Trust, Justin Robert Chasalow 1999 Trust, Justin Robert Chasalow Transferee Trust No. 1, Madeline Celia Chais 1992 Trust, Madeline Chais Transferee Trust No. 1, Mark Hugh Chais 1983 Trust, Mark Hugh Chais Issue Trust No. I, Mark Hugh Chais Issue Trust No. II, Mark Hugh Chais Trust No. 2, Mark Hugh Chais Trust No. 3, Onondaga, Inc., Onondaga, Inc. Pension Plan, Rachel Allison Chasalow 1999 Trust, Rachel Allison Chasalow Transferee Trust No. 1, Tali Chais 1997 Trust, Tali Chais Transferee Trust No. 1, Unicycle Corporation, Unicycle Trading Company, William & Wrenn Chais 1994 Family Trust, William Frederick Chais 1983 Trust, William Frederick Chais Issue Trust No. I, William Frederick Chais Issue Trust No. II, William Frederick Chais Trust No. 2, William Frederick Chais Trust No. 3. (Sherman, Andrew) (Entered: 12/03/2012)
12/3/2012	5127	Opposition Brief Memorandum Of Law Of Customer-Claimant The Kostin Co. In Opposition To The Trustee's Motion For An Order Affirming Trustee's Calculations of Net Equity And Denying Time-Based Damages (related document(s) 5038) filed by Bernard J. Garbutt III on behalf of The Kostin Company. (Garbutt, Bernard) (Entered: 12/03/2012)
12/3/2012	5128	Declaration Of Bernard J. Garbutt III In Support Of The Kostin Co.'s Memorandum Of Law filed by Bernard J. Garbutt III On Behalf Of The Kostin Company. (Entered: 12/3/2012)
12/3/2012	5129	[Reply To Motion] Customers' Objection To Trustee's Motion For An Order Denying Time-Based Damages filed by Helen Davis Chaitman On Behalf Of Marsha Peshkin et al. (Entered: 12/3/2012)
12/3/2012	5130	Declaration Of Helen Davis Chaitman In Support Of Customers' Objection To Trustee's Motion For An Order Denying Time-Based Damages filed by Helen Chaitman On Behalf Of Marsha Peshkin. (Entered: 12/3/2012)

Filed On:	Docket No.	Docket Text
12/3/2012	5131	Objection to Motion Customers' Objection to Trustee's Motion for an Order Denying Time-Based Damages (related document(s) 5038) filed by Helen Chaitman on behalf of Marsha Peshkin. (Chaitman, Helen) (Entered: 12/03/2012)
12/3/2012	5140	Amended Declaration Of Helen Davis Chaitman In Support Of Customers' Objection To Trustee's Motion For An Order Denying Time-Based Damages filed by Helen Davis Chaitman On Behalf Of Marsha Peshkin. (Entered: 12/3/2012)
12/3/2012	5141	Letter To Judge Lifland By Richard A. Kirby On Behalf Of Estate Of Doris M. Pearlman. (Entered: 12/7/2012)
1/8/2013	5191	Objection to Trustee's Motion for an Order Denying Time-Based Damages filed by David Gross. (Rouzeau, Anatin) (Entered: 01/08/2013)

SIPC v. BLMIS, 08-1789-BRL (Bankr. S.D.N.Y.) (Net Equity Filings)

Filed On:	Docket No.	Docket Text
10/16/2009	519	Memorandum of Law of the Securities Investor Protection Corporation in Support of Trustee's Motion for an Order Upholding Trustee's Determination Denying "Customer" Claims for Amounts Listed on Last Statement, Affirming Trustee's Determination of Net Equity, and Expunging Those Objections with Respect to the Determinations Relating to Net Equity filed by Josephine Wang on behalf of Securities Investor Protection Corporation. (Wang, Josephine) (Entered: 10/16/2009)
10/16/2009	520	Declaration of Hemant Sharma (related document(s)519) filed by Josephine Wang on behalf of Securities Investor Protection Corporation. (Wang, Josephine) (Entered: 10/16/2009)
10/16/2009	524	Motion for Objection to Claim(s) /Trustee's Motion For an Order Upholding Trustee's Determination Denying Customer Claims' For Amounts Listed on Last Statement, Affirming Trustee's Determination of Net Equity, and Expunging Those Objections With Respect to The Determinations Relating To Net Equity filed by David J. Sheehan on behalf of Irving H. Picard. (Attachments: 1 Declaration of Joseph Looby in Support of Trustee's Motion 2 Declaration of Bik Cheema in Support of Trustee's Motion 3 Declaration of Seanna R. Brown in Support of Trustee's Motion 4 Exhibit A to Brown Declaration 5 Exhibit B to Brown Declaration 6 Exhibit C to Brown Declaration) (Sheehan, David) (Entered: 10/16/2009)

Filed On:	Docket No.	Docket Text
10/16/2009	525	Memorandum of Law in Support of Trustee's Motion For an Order Upholding Trustee's Determination Denying "Customer" Claims For Amounts Listed on Last Customer Statement, Affirming Trustee's Determination of Net Equity, and Expunging Those Objections With Respect To The Determinations Relating To Net Equity (related document(s) 524) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 10/16/2009)
10/19/2009	530	Motion for Objection to Claim(s) /Exhibit A to the Trustee's Motion for an Order Upholding Trustee's Determination Denying Customer Claims' For Amounts Listed on Last Statement, Affirming Trustee's Determination of Net Equity and Expunging Those Objections With Respect to The Determinations Relating to Net Equity (related document(s) 524) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 10/19/2009) (Entered: 10/19/2009)
01/15/2010	1773	Memorandum of Law /Reply Brief In Support of Trustee's Motion For An Order Upholding Trustee's Determination Denying "Customer" Claims For Amounts Listed On Last Customer Statement, Affirming Trustee's Determination Of Net Equity, And Expunging Those Objections With Respect To The Determinations Relating To Net Equity (related document(s) 12, 524, 437, 525) filed by David J. Sheehan on behalf of Irving H. Picard. (Sheehan, David) (Entered: 01/15/2010)
01/15/2010	1774	Declaration of Seanna R. Brown in Support of Trustee's Reply Brief in Support of The Trustee's Motion For an Order Upholding Trustee's Determination Denying "Customer" Claims For Amounts Listed On Last Customer Statement, Affirming Trustee's Determination of Net Equity, And Expunging Those Objections With Respect To The Determinations Relating To Net Equity (related document(s) 1773) filed by Seanna Brown on behalf of Irving H. Picard. (Attachments: 1 Exhibit A) (Brown, Seanna) (Entered: 01/15/2010)

In re Bernard L. Madoff Investment Sec. LLC, 10-2378-bk (2d Cir.) (Net Equity Filings)

Filed On:	Docket No.	Docket Text
09/20/2010	282	Brief, on behalf of Appellee Securities Investor Protection Corporation. Service date 09/20/2010 by US mail, CM/ECF.
09/20/2010	283	Brief, on behalf of Trustee-Appellee Irving H. Picard. Service date 09/20/2010 by US mail, CM/ECF. [109548] [10-2378]--[Edited 09/20/2010 by WD]--[Edited 09/20/2010 by WD]--[Edited 09/21/2010 by WD]

Filed On:	Docket No.	Docket Text
08/30/2011	495	Opposition To Motion to file document [494], on behalf of Appellee Securities Investor Protection Corporation. Service date 08/30/2011 by CM/ECF, 3rd party.
09/07/2011	518	Motion, to strike [514],[514], [513],[513], [509],[509], [508],[508], on behalf of Appellee Irving H. Picard. Service date 09/07/2011 by CM/ECF.

COUNTER-STATEMENT OF THE ISSUES TO BE PRESENTED ON APPEAL

The Trustee hereby submits the following counter-statement of the issues on appeal:

1. Whether the Bankruptcy Court correctly held that, as a matter of law and otherwise, “net equity” as defined in SIPA does not include any adjustment for time-based damages, including interest, inflation or any “constant dollar” adjustment, and is limited to the amounts calculated by use of the net investment method approved by the Second Circuit.

2. Whether the Bankruptcy Court correctly held that there was no basis to extend deference to the Securities and Exchange Commission’s position regarding the calculation of “net equity.”

Dated: New York, New York
October 22, 2013

Respectfully submitted,

/s/ David J. Sheehan

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